

February 24, 2009

Omnipoint Communications, Inc.
15 Commerce Way, Suite B
Norton, Massachusetts 02740

Re: Tiverton Zoning Board Relief: Map 3-13, Block/Plat 108, Card/Lot 47E

The following is the decision on your Petition heard by the Zoning Board of Review (the "Board") on December 3, 2008 and on February 4, 2009 for a special use permit pursuant to Article IV, Section 5 of the Tiverton Zoning Ordinance to install and operate a wireless communications facility consisting of a 140' monopole with antennas and accessory equipment and for a variance to Article V, Sections 1 and 5(b) whereby the monopole exceeds the maximum height with less setback than required on property located at 1710 Eagleville Road, Tiverton, Rhode Island, at Map 3-13, Block/Plat 108, Card/Lot 47E (the "Premises") located in an Industrial zoning district.

After the testimony was completed at the public hearing for which due notice was given and a record kept, and after having viewed the premises and the surrounding area, the Board, taking into consideration its knowledge and expertise and after taking into consideration all of the testimony at the public hearing, made the following findings:

1. The Premises contains 3.5 acres of land area, more or less, zoned Industrial.
2. The petitioner desires to erect a 140' monopole wireless communications facility with accessory equipment on the Premises.
3. Article IV, Section 5 of the Zoning Ordinance requires the issuance of a special use permit to establish a wireless communications facility on the Premises.
4. The proposed monopole exceeds the maximum height requirement and is located closer than permitted to the property line and within the required setbacks for an Industrial zone.
5. The petitioner offered two expert witnesses to support his application for the special use permit; one witness testified as to a lack of wireless coverage for one particular wireless service provider in the area and the other witness testified as to the health effects on humans of wireless radio frequency transmissions.
6. Several objectors were present who testified that the proposal would not be in character with the surrounding development in the area and was not consistent with the comprehensive community plan or the provisions of the Zoning Ordinance.
7. At least two objectors testified that if the monopole failed and fell to the earth it was within distance of residential structures and would not be contained entirely on the site. Another objector alleged that a property line boundary was in dispute and that the property lines as shown on the petitioner's application were in error.
8. The petitioner offered no evidence to show compliance with the standards for relief contained in the Zoning Ordinance for the sought after relief. The petitioner disputed the property line dispute but offered no evidence to substantiate that the property lines shown on the site plans were correct.
9. The Board did not find sufficient evidence was offered by the petitioner to show compliance with the standards for relief contained in the Zoning Ordinance for the

sought after relief. The Board did not find that the petitioner adequately addressed the health and safety risks posed on the adjoining residents by the proposal. The Board also determined that other sites may be available to locate the proposed facility that would not pose the same risks or consequences as the current proposal.

Based on the foregoing, the Board voted to deny the petitioner's application for a special use permit and variance, as follows:

As to the special use permit-

- (1) The public convenience and welfare will not be served by allowing the proposed monopole and wireless facility on the Premises.
- (2) The proposal will be detrimental to the public health, safety, morals or welfare.
- (3) The proposal will not be compatible with neighboring uses and will adversely affect the general character of the area.
- (4) The proposal will create a nuisance in the neighborhood, and will hinder or endanger vehicular or pedestrian movement.
- (5) The proposal is not compatible with the comprehensive community plan of the Town of Tiverton.

As to the variance-

- a. Special conditions and circumstances do not exist which are special and peculiar to the land or structure involved, and which are applicable to other lands or structures in the same zoning district, and are due to a physical or economic disability of the petitioner.
- b. Issuance of the requested relief will be contrary to the public interest, and that, owing to special or peculiar site or structural conditions, literal enforcement of the provisions of this ordinance would not result in an unnecessary hardship on the petitioner.
- c. The unnecessary hardship, which the petitioner seeks to avoid, has been imposed by prior action of the petitioner and is based purely for monetary gain or loss.
- d. The granting of the requested variance will alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based.
- e. Relief from the provisions of this ordinance is not the least relief necessary to remove the unnecessary hardship.
- f. That nonconforming use of neighboring lands, structures or buildings in the same district, and permitted use of lands, structures or buildings in an adjacent district did not form the grounds for the application of this variance request.
- g. That the hardship that will be suffered by the petitioner of the subject property if the dimensional variance is not granted does not amount to more than a mere inconvenience.

This decision must be recorded in the Land Evidence Records in the Town Clerk's Office. (Please note that the appeal period (20 days) begins when this decision is recorded and posted with the Town Clerk's Office).

Sincerely,

David Collins, Chairman
Tiverton Zoning Board of Review

Recorded 3-2-09
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